

This letter concerns the tax rate imposed on biodiesel. See 35 ILCS 120/2-10. (This is a GIL.)

May 3, 2007

Dear Xxxxx:

This letter is in response to your letter dated August 11, 2006, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We are requesting a legal ruling on the sales tax liability of the product we are selling. We pick up waste vegetable oil from restaurants, run it through a filtration-cleaning process and sell it to be used as a fuel for diesel engines.

We have been told conflicting things as to the sales tax liability depending on whether or not it is classed as a biodiesel. There is nothing added to the veggie oil, but it is an alternative fuel. Those we have been dealing with on the state level seem to call it a biodiesel fuel. The federal representative we have talked to calls it a biodiesel fuel and says it is subject to the \$.50 per gallon rebate.

Please let us know the position Illinois is taking so we can properly invoice our customers.

Thank you.

DEPARTMENT'S RESPONSE

The Retailers' Occupation Tax Act states that "[w]ith respect to 100% biodiesel, as defined in the Use Tax Act, and biodiesel blends, as defined in the Use Tax Act, with more than 10% but no more than 99% biodiesel, the tax imposed by this Act does not apply to the proceeds of sales made on or after July 1, 2003 and on or before December 31, 2013 but applies to 100% of the proceeds of sales made thereafter." See 35 ILCS 120/2-10.

The term “biodiesel,” as set forth in the Use Tax Act, means “a renewable diesel fuel derived from biomass that is intended for use in diesel engines.” 35 ILCS 105/3-41. “Biomass” means non-fossil organic materials that have an intrinsic chemical energy content. “Biomass” includes, but is not limited to, soybean oil, other vegetable oils, and ethanol. 35 ILCS 105/3-43.

Fuel that is produced by simply refining vegetable oil, with no additives, may qualify as “biodiesel.”

Please note that this response concerns Illinois sales tax only and does not address any Illinois tax liabilities under the International Fuel Tax Agreement or the Motor Fuel Tax Law. (See 35 ILCS 505/1 et seq.) This is the information that should be applied to any Illinois sales tax obligations even though it may differ from the federal tax information.

If you require additional information, please visit our website at www.ILTAX.com or contact the Department’s Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

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